

AMENDED IN ASSEMBLY APRIL 18, 2006

AMENDED IN SENATE JANUARY 23, 2006

AMENDED IN SENATE JANUARY 4, 2006

AMENDED IN SENATE APRIL 26, 2005

AMENDED IN SENATE MARCH 29, 2005

## **SENATE BILL**

**No. 585**

**Introduced by Senator Kehoe**  
*(Coauthor: Senator Scott)*

February 18, 2005

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An act to amend Section 6389 of the Family Code, relating to protective orders.

### LEGISLATIVE COUNSEL'S DIGEST

SB 585, as amended, Kehoe. Protective orders: firearms.

Existing law prohibits a person subject to a protective order, as defined, from owning, possessing, purchasing, or receiving a firearm while that protective order is in effect and makes a willful and knowing violation of a protective order a crime. Existing law also requires the court, upon issuance of a protective order, to order the respondent to relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control, within 24 hours of being served with the order, by either surrendering the firearm to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer. Under existing law, a person ordered to relinquish any firearm is required to file with the court a receipt showing the firearm was surrendered or sold within 72 hours after receiving the order.

This bill would instead require the person ordered to relinquish a firearm to immediately surrender the firearm in a safe manner, upon request of any law enforcement officer, or within 24 hours as specified above. The bill also would require the person to file a receipt with the court within 48 hours after being served with the order and would provide that the failure to timely file a receipt constitutes a violation of the protective order. Because a willful and knowing violation of a protective order is a crime, the bill would expand the scope of an existing crime, resulting in a state-mandated local program.

The bill would also require application forms for protective orders adopted by the Judicial Council and approved by the Department of Justice to be amended to require the petitioner to describe the number, types, and locations of any firearms presently known by the petitioner to be possessed or controlled by the respondent. The bill would additionally include recommendations for written policies and standards for law enforcement officers who request relinquishment of firearms and would authorize the Attorney General's office, on or before December 31, 2007, to work with local law enforcement to develop and disseminate model policies and standards.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 6389 of the Family Code is amended to  
2     read:  
3     6389. (a) A person subject to a protective order, as defined in  
4     Section 6218, shall not own, possess, purchase, or receive a  
5     firearm while that protective order is in effect. Every person who  
6     owns, possesses, purchases or receives, or attempts to purchase  
7     or receive a firearm while the protective order is in effect is  
8     punishable pursuant to subdivision (g) of Section 12021 of the  
9     Penal Code.  
10    ~~(b)~~—

On

(b) On all forms providing notice that a protective order has been requested or granted, the Judicial Council, shall include a notice that, upon service of the order, the respondent shall be ordered to relinquish possession or control of any firearms and not to purchase or receive or attempt to purchase or receive any firearms for a period not to exceed the duration of the restraining order.

(c) (1) Upon issuance of a protective order, as defined in Section 6218, the court shall order the respondent to relinquish any firearm in the respondent's immediate possession or control or subject to the respondent's immediate possession or control.

(2) The relinquishment ordered pursuant to paragraph (1) shall occur by immediately surrendering the firearm in a safe manner, upon request of any law enforcement officer, to the control of the officer, after being served with the protective order. Alternatively, if no request is made by a law enforcement officer, the relinquishment shall occur within 24 hours of being served with the order, by either surrendering the firearm in a safe manner to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer, as specified in Section 12071 of the Penal Code. The law enforcement officer or licensed gun dealer taking possession of the firearm pursuant to this subdivision shall issue a receipt to the person relinquishing the firearm at the time of relinquishment. A person ordered to relinquish any firearm pursuant to this subdivision shall file with the court that issued the protective order, within 48 hours after being served with the order, the receipt showing the firearm was surrendered to a local law enforcement agency or sold to a licensed gun dealer. Failure to timely file a receipt shall constitute a violation of the protective order.

(3) The application forms for protective orders adopted by the Judicial Council and approved by the Department of Justice shall be amended to require the petitioner to describe the number, types, and locations of any firearms presently known by the petitioner to be possessed or controlled by the respondent.

(4) It is recommended that every law enforcement agency in the state develop, adopt, and implement written policies and standards for law enforcement officers who request immediate relinquishment of firearms. On or before December 31, 2007, the

1 Attorney General's office may work with local law enforcement  
2 to develop and disseminate model policies and standards to all  
3 law enforcement agencies in the state, as recommended in this  
4 subdivision.

5 (d) If the respondent declines to relinquish possession of any  
6 firearm based on the assertion of the right against  
7 self-incrimination, as provided by the Fifth Amendment to the  
8 United States Constitution and Section 15 of Article I of the  
9 California Constitution, the court may grant use immunity for the  
10 act of relinquishing the firearm required under this section.

11 (e) A local law enforcement agency may charge the  
12 respondent a fee for the storage of any firearm pursuant to this  
13 section. This fee shall not exceed the actual cost incurred by the  
14 local law enforcement agency for the storage of the firearm. For  
15 purposes of this subdivision, "actual cost" means expenses  
16 directly related to taking possession of a firearm, storing the  
17 firearm, and surrendering possession of the firearm to a licensed  
18 dealer as defined in Section 12071 of the Penal Code or to the  
19 respondent.

20 (f) The restraining order requiring a person to relinquish a  
21 firearm pursuant to subdivision (c) shall state on its face that the  
22 respondent is prohibited from owning, possessing, purchasing, or  
23 receiving a firearm while the protective order is in effect and that  
24 the firearm shall be relinquished to the local law enforcement  
25 agency for that jurisdiction or sold to a licensed gun dealer, and  
26 that proof of surrender or sale shall be filed with the court within  
27 a specified period of receipt of the order. The order shall also  
28 state on its face the expiration date for relinquishment. Nothing  
29 in this section shall limit a respondent's right under existing law  
30 to petition the court at a later date for modification of the order.

31 (g) The restraining order requiring a person to relinquish a  
32 firearm pursuant to subdivision (c) shall prohibit the person from  
33 possessing or controlling any firearm for the duration of the  
34 order. At the expiration of the order, the local law enforcement  
35 agency shall return possession of any surrendered firearm to the  
36 respondent, within five days after the expiration of the  
37 relinquishment order, unless the local law enforcement agency  
38 determines that (1) the firearm has been stolen, (2) the  
39 respondent is prohibited from possessing a firearm because the  
40 respondent is in any prohibited class for the possession of

1 firearms, as defined in Sections 12021 and 12021.1 of the Penal  
2 Code and Sections 8100 and 8103 of the Welfare and Institutions  
3 Code, or (3) another successive restraining order is used against  
4 the respondent under this section. If the local law enforcement  
5 agency determines that the respondent is the legal owner of any  
6 firearm deposited with the local law enforcement agency and is  
7 prohibited from possessing any firearm, the respondent shall be  
8 entitled to sell or transfer the firearm to a licensed dealer as  
9 defined in Section 12071 of the Penal Code. If the firearm has  
10 been stolen, the firearm shall be restored to the lawful owner  
11 upon his or her identification of the firearm and proof of  
12 ownership.

13 (h) The court may, as part of the relinquishment order, grant  
14 an exemption from the relinquishment requirements of this  
15 section for a particular firearm if the respondent can show that a  
16 particular firearm is necessary as a condition of continued  
17 employment and that the current employer is unable to reassign  
18 the respondent to another position where a firearm is  
19 unnecessary. If an exemption is granted pursuant to this  
20 subdivision, the order shall provide that the firearm shall be in  
21 the physical possession of the respondent only during scheduled  
22 work hours and during travel to and from his or her place of  
23 employment. In any case involving a peace officer who as a  
24 condition of employment and whose personal safety depends on  
25 the ability to carry a firearm, a court may allow the peace officer  
26 to continue to carry a firearm, either on duty or off duty, if the  
27 court finds by a preponderance of the evidence that the officer  
28 does not pose a threat of harm. Prior to making this finding, the  
29 court shall require a mandatory psychological evaluation of the  
30 peace officer and may require the peace officer to enter into  
31 counseling or other remedial treatment program to deal with any  
32 propensity for domestic violence.

33 (i) During the period of the relinquishment order, a respondent  
34 is entitled to make one sale of all firearms that are in the  
35 possession of a local law enforcement agency pursuant to this  
36 section. A licensed gun dealer, who presents a local law  
37 enforcement agency with a bill of sale indicating that all firearms  
38 owned by the respondent that are in the possession of the local  
39 law enforcement agency have been sold by the respondent to the  
40 licensed gun dealer, shall be given possession of those firearms,

1 at the location where a respondent's firearms are stored, within  
2 five days of presenting the local law enforcement agency with a  
3 bill of sale.

4 (j) The disposition of any unclaimed property under this  
5 section shall be made pursuant to Section 1413 of the Penal  
6 Code.

7 (k) The return of a firearm to any person pursuant to  
8 subdivision~~(f)~~ (g) shall not be subject to the requirements of  
9 subdivision (d) of Section 12072 of the Penal Code.

10 (l) If the respondent notifies the court that he or she owns a  
11 firearm that is not in his or her immediate possession, the court  
12 may limit the order to exclude that firearm if the judge is  
13 satisfied the respondent is unable to gain access to that firearm  
14 while the protective order is in effect.

15 (m) Any respondent to a protective order who violates any  
16 order issued pursuant to this section shall be punished under the  
17 provisions of subdivision (g) of Section 12021 of the Penal Code.

18 SEC. 2. No reimbursement is required by this act pursuant to  
19 Section 6 of Article XIII B of the California Constitution because  
20 the only costs that may be incurred by a local agency or school  
21 district will be incurred because this act creates a new crime or  
22 infraction, eliminates a crime or infraction, or changes the  
23 penalty for a crime or infraction, within the meaning of Section  
24 17556 of the Government Code, or changes the definition of a  
25 crime within the meaning of Section 6 of Article XIII B of the  
26 California Constitution.